



September 21, 2011

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Connect America Fund*, WC Dkt. 10-90; *A National Broadband Plan for Our Future*, GN Dkt. 09-51; *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Dkt. 07-135; *High-Cost Universal Service Support*, WC Dkt. 05-337; *Developing a Unified Intercarrier Compensation Regime*, CC Dkt. 01-92; *Federal-State Joint Board on Universal Service*, CC Dkt. 96-45; *Lifeline and Link-Up*, WC Dkt. 03-109; *Universal Service Contribution Methodology*, WC Dkt. 06-122.

Dear Ms. Dortch:

The Federal Communications Commission (FCC or Commission) has reached a historic juncture in its efforts to update the nation's universal service fund (USF) and intercarrier compensation (ICC) systems to fuel broadband deployment and the transition to all-Internet Protocol (IP) networks.¹ Hundreds of diverse parties have filed thousands of pages and there is clear consensus that reform is necessary.

Although many of the parties diverge on the specifics, there is widespread agreement on many key points. Google respectfully urges that the extensive base of record support provides a solid foundation for the FCC to move forward with an orderly transition of USF and ICC to create the next generation of networks and services for all Americans.

Diverse Interests Support Restructuring USF to Fund Broadband

Stakeholders from across the industry agree with the Tech/Users Framework² that the FCC should refocus the current USF system to support broadband in light of the

¹ *In the Matter of Connect America Fund*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, 26 FCC Rcd. 4554 (2011) ("NPRM"); *Further Inquiry Into Certain Issues in the Universal Service-Intercarrier Compensation Transformation Proceeding*, Public Notice, DA 11-1348 (Aug. 3, 2011) ("Public Notice"). Unless otherwise noted, all Comments cited herein were filed in response to the Public Notice on August 24, 2011, and Reply Comments on September 6, 2011.

² Letter from Ad Hoc Telecommunications Users Committee, Google Inc., Skype Communications S.A.R.L., Sprint Nextel Corporation, and Vonage Holdings Corp. to Julius Genachowski, Chairman, FCC, *et al.*, WC Dkt. 10-90, *et al.* (filed Aug. 18, 2011) ("Tech/Users Letter") (proposing the "Tech/Users (footnote continued on following page)

important role broadband plays in the lives of individuals and society as a whole.³ Replacing current implicit ICC subsidies with explicit support directed to broadband will help achieve *National Broadband Plan* goals and spur the transition to all-IP networks, crucial to economic growth and productivity.⁴

The Tech/Users Framework demonstrated that need must be a prerequisite to subsidy funding, especially as advanced telecommunications networks create new revenue streams to support broadband operations.⁵ There is wide consensus that distribution of broadband funds should be competitively and technologically neutral.⁶ Any technology that meets the delineated broadband threshold requirements should be eligible for support, with subsidies going to the provider best able to build-out broadband quickly and cost effectively. Providers must have sufficient time to deploy broadband infrastructure, and should be permitted to demonstrate why a proposed build-out time frame is reasonable,⁷ but there must be incentives for rapid deployment.

Many parties also emphasize that the States are important partners in meeting USF goals.⁸ With their in-depth knowledge of regional and local conditions, the States are well suited to define appropriate service areas, assess whether parties qualify for support, and monitor and report on broadband build-out by funding recipients.⁹ Many

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Framework”). The Tech/Users Framework supplements other proposals before the Commission. *See, e.g.*, Letter from AT&T, CenturyLink, FairPoint Communications, Frontier, Verizon and Windstream, to Julius Genachowski, Chairman, FCC, *et al.*, WC Dkt. 10-90, *et al.* (filed July 29, 2011) (“*ABC Plan*”); Letter from United States Telecom Association, AT&T, CenturyLink, FairPoint Communications, Frontier, Verizon, Windstream, National Telecommunications Cooperative Association, OPASTCO, and Western Telecommunications Alliance, to Julius Genachowski, Chairman, FCC, *et al.*, WC Dkt. 10-90, *et al.* (filed July 29, 2011); *see also* Comments of the Federal State Joint Board on Universal Service at 33-34, WC Dkt. 10-90, *et al.* (filed May 2, 2011).

³ *See, e.g.*, Comments of AT&T, CenturyLink, Fairpoint, Frontier, Verizon and Windstream (“AT&T, *et al.*”) at 2; Comments of COMPTTEL at 24; Comments of CTIA – The Wireless Association (“CTIA”) at 2; Comments of National Cable & Telecommunications Association (“NCTA”) at 9.

⁴ *See* Omnibus Broadband Initiative, *Connecting America: The National Broadband Plan*, 59, 142, GN Dkt. 09-51 (2010) (“*National Broadband Plan*”); NPRM at ¶¶ 506, 527. *See also, e.g.*, Tech/Users Letter at 3.

⁵ *See, e.g.*, Comments of ADTRAN, Inc. at 7; Comments of Rural Cellular Association (“RCA”) at 17; Reply Comments of Nebraska Rural Independent Companies at 6-10, 30-31; Reply Comments of NASUCA at 18.

⁶ *See, e.g.*, Comments of CTIA at 20; Comments of Comcast Corporation (“Comcast”) at 33-35; Comments of COMPTTEL at 24-25; Reply Comments of Kansas Corporation Commission at 18-19.

⁷ *See, e.g.*, Reply Comments of Independent Telephone & Telecommunications Alliance, Cincinnati Bell Inc., Hargray Telephone Company, Inc., and Hickory Tech Corporation (“ITTA, *et al.*”) at 10 (suggesting a 5 year build-out requirement is reasonable).

⁸ *See, e.g.*, Comments of MTPCS, LLC d/b/a Cellular One at 22; Comments of New York Public Service Commission at 6-8; Reply Comments of AT&T, *et al.* at 20.

⁹ *See, e.g.*, Comments of AT&T, *et al.* at 14-15; Comments of the National Exchange Carrier Association, Inc., National Telecommunications Cooperative Association, OPASTCO, and Western (footnote continued on following page)

States also maintain their own universal service funds. The FCC should embrace a coordinated federal-state approach to attain universal broadband.

There is broad support in the record for targeted accountability measures on USF support, including build-out and reporting obligations.¹⁰ Requiring accountability will help ensure that subsidies are well spent and assist in preventing waste, as well as fraud and abuse.¹¹ A wide range of entities agree that public interest requirements, including obligations similar to those imposed on BTOP grantees, as well as open Internet and wholesale commitments, will help ensure public funds are used wisely.¹² Various commenters agreed that the FCC cannot ignore how USF will be funded and should address contribution reform as part of its comprehensive restructuring.¹³

The Record Highlights the Need for the FCC to Reform Traffic Exchange

As the nation's largest incumbent wireline carriers explain, today's traffic exchange regime is a "relic of monopoly regulation that is unsustainable in today's competitive marketplace."¹⁴ During the evolution of networks and services away from TDM to IP, the FCC must ensure it does not inadvertently hinder IP network and service growth. Transitional issues are of course important, but forward-looking regulation must be fashioned around the enormous capabilities of IP networks and not shoehorned into the limited functionality of TDM.

There is overwhelming agreement that inflated carrier access charges must be reduced.¹⁵ Today's per-minute carrier access charges create inefficient economic behavior, including distorted carrier investment incentives that hinder the transition to all-IP networks and broadband upgrades.¹⁶ Rather than a flash cut away from current high carrier access charges, the Tech/Users Framework urges a measured phase-in of rate reductions. To create efficient market signals and spur broadband and IP networks,

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Telecommunications Alliance ("NECA, *et al.*") at 33; Comments of National Association of Regulatory Utility Commissioners at 4.

¹⁰ *See, e.g.*, Reply Comments of AT&T, *et al.* at 20-21; Reply Comments of ITTA, *et al.* at 10; Reply Comments of NASUCA at 11-14; Reply Comments of Nebraska Rural Independent Companies at 26.

¹¹ *See, e.g.*, Comments of Comcast at 33-35; Comments of NASUCA at 37-38; Comments of Satellite Broadband Providers at 21-22; Comments of Schools, Health and Libraries Broadband Coalition at 19.

¹² *See, e.g.*, Comments of EarthLink, Inc. ("EarthLink") at 33-35; Comments of NASUCA at 50-51; Comments of Sprint at 24; Reply Comments of Iowa Association of Municipal Utilities at 6-7.

¹³ *See, e.g.*, Comments of Missouri Public Service Commission at 2-3; Reply Comments of Home Telephone Co. at 1; Reply Comments of NASUCA at 18.

¹⁴ Reply Comments of AT&T, *et al.* at 7.

¹⁵ *See, e.g.*, Comments of AT&T, *et al.* at 3; Comments of Comcast at 12; Comments of CTIA at 3; Comments of Sprint at 7-8; Reply Comments of AT&T, *et al.* at 7.

¹⁶ *See* NPRM at ¶ 41; *National Broadband Plan* at 142, 149. *See also* Reply Comments of AT&T, *et al.* at 7; Reply Comments of Bandwidth.com, Inc. ("Bandwidth") at 2-3.

carriers will also be required to adjust their network investments and operations. Unified traffic exchange rules will facilitate this transition.¹⁷

The FCC should clarify IP interconnection issues because IP is rapidly becoming the pervasive transmission technology.¹⁸ The record is replete with real-world experiences that demonstrate why reasonable market-based IP interconnection arrangements are not always attainable, even among incumbent wireline carriers.¹⁹ While not all parties concur on the requisite regulatory parameters, there is significant agreement that the FCC should affirm the basic duty of all local network providers to interconnect and ensure there is a viable forum for dispute resolution.²⁰ This could range from a formal mechanism at the FCC's Enforcement Bureau, the FCC's Technological Advisory Council or an industry group similar to the Broadband Internet Technical Advisory Group. A starting point could be to develop baseline reasonable interconnection guidelines, including for points of interconnection.²¹

Extending TDM Regulation to VoIP Would Defeat the FCC's Goals

Significantly, the record also demonstrates why imposing carrier access charges designed for TDM technology on VoIP traffic will impede the transition to all-IP networks, hinder broadband deployment and adoption, and send precisely the wrong message about our national communications goals.²² Expanding legacy rate regulation would be contrary to the FCC's mandate to encourage the deployment of advanced telecommunications capabilities and contrary to federal policy to keep information services unfettered by regulation.²³ It would also be contrary to long-established FCC precedent²⁴ and would harm consumer welfare.²⁵

¹⁷ See, e.g., Comments of Google at 30-34; Comments of Cbeyond, Inc., Integra Telecom, Inc. and tw telecom, Inc. ("Cbeyond, et al.") at 10, 14; Comments of Telecommunications Industry Association at 10; Reply Comments of AT&T, et al. at 21-26; Reply Comments of Bandwidth at 7.

¹⁸ See, e.g., Tech/Users Letter at 9-12; Comments of COMPTTEL at 4-5; Comments of NCTA at 18; Comments of Sprint at 6; Comments of T-Mobile USA, Inc. ("T-Mobile") at 8-10; Comments of XO Communications, LLC at 11-12; Reply Comments of BT Americas Inc. ("BT") at 2.

¹⁹ See, e.g., Reply Comments of Nebraska Rural Independent Companies at 37-40.

²⁰ See e.g., Comments of EarthLink at 3-4, 9; Comments of Sprint at 6; Reply Comments of Bandwidth at 11-12; Reply Comments of BT at 2-3.

²¹ See, e.g., Reply Comments of Cbeyond, Inc., et al. at 11.

²² See, e.g., Comments of Sprint at 9, 18-19; Comments of Vonage at 3-5; Comments of the Voice On the Net Coalition ("VON Coalition") at 5-8; Reply Comments of Bandwidth at 2-3; Reply Comments of MegaPath Inc. and Covad Communications Company ("MegaPath/Covad") at 4-5.

²³ See 47 U.S.C. §§ 1302(a), (b); 230 (b)(2).

²⁴ See, e.g., *In the Matter of MTS and WATS Market Structure*, Memorandum Opinion and Order, 97 FCC 2d 682, ¶ 83 (1983); *In the Matter of Northwest Bell Telephone Company Petition for Declaratory Ruling*, Memorandum Opinion and Order, 2 FCC Rcd. 5986, ¶ 20 (1987); *In the Matter of Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act*, First Report and Order, 11 FCC Rcd. 21905, ¶¶ 102, 104-105 (1996), as modified by, Order on Reconsideration, 12 FCC Rcd. 2297 (1997); 47 C.F.R. §§ 69.5 (a), (b).

The FCC cannot simply assume that all VoIP services are identical.²⁶ The governing statutory framework requires the FCC to determine if a particular IP service with a voice component is a “telecommunications service,” an “information service,” or a software application that falls wholly outside of the FCC’s jurisdiction.²⁷ For example, requiring VoIP services that meet the definition of “telecommunications services” under the Communications Act, such as fixed interconnected VoIP offered by facilities-based providers, to be treated like TDM on a transitional basis for purposes of traffic exchange may be defensible as a public policy matter, and consistent with the governing statute. However, permanently expanding the access charge regime to other VoIP providers and services, including one-way VoIP services, is neither defensible nor lawful. In fact, immediately subjecting VoIP to today’s inflated access charges, as some propose,²⁸ would represent precisely the sort of “sudden change” that many strenuously assert creates unacceptable market disruption.²⁹

Instead, the facts demonstrate that IP traffic should be subject to bill-and-keep or very low rates to reflect the zero or near-zero cost of IP traffic.³⁰ A bill-and-keep methodology, where carriers recover their termination costs primarily from their own users, increases economic efficiency. User prices will better reflect costs and the transactional costs of billing, accounting and tracking traffic are eliminated.³¹ If VoIP traffic identification is absolutely required until the shift to all-IP networks is complete,³² then the costs of any requirements must be weighed with their temporary utility as networks transition and the need to identify VoIP traffic vanishes.³³ Far from encouraging arbitrage, adoption of bill-and-keep for VoIP traffic would create incentives to upgrade to IP as the more efficient and cost effective communications transmission technology.

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²⁵ See *ABC Plan*, Professor Hausman Consumer Benefits Paper, Attach. 4 at 8. See also Comments of VON Coalition at 3-4; Reply Comments of Bandwidth at 6; Reply Comments of MegaPath/Covad at 3-4; Reply Comments of Vonage at 7-8.

²⁶ See, e.g., NPRM at ¶ 617, n.935. See also, e.g., Comments of Google at 3-7, WC Dkt. 10-90, *et al.* (filed Apr. 1, 2011) (describing the vast array of services with distinct functionalities and uses encompassed by the term “VoIP”).

²⁷ See 47 U.S.C. §§ 153(24), (53).

²⁸ See, e.g., *ABC Plan*, Framework of the Proposal, Attach. 1 at 10.

²⁹ See NPRM at ¶ 12. See also Comments of Sprint at 17-20; Comments of Vonage at 3-5; Comments of VON Coalition at 3-4.

³⁰ See Comments of CTIA at 4-5; Comments of MetroPCS at 17; Comments of RCA at 21; Reply Comments of Bandwidth at 7-9; Reply Comments of Vonage at 9.

³¹ See, e.g., Comments of Sprint at 9; Reply Comments of Vonage at 9.

³² See, e.g., NPRM at ¶ 627.

³³ See, e.g., Reply Comments of NECA, *et al.* at 28-29; Reply Comments of Vonage at 11-12.

The FCC has a clear window of opportunity to adopt forward-looking ICC and USF reform. There is substantial agreement on key areas by diverse stakeholders. Appropriate reform will increase access for all Americans to robust broadband capabilities and help complete the transition to all-IP networks, reducing costs, generating efficiencies, and promoting innovation and investment. In light of this far-ranging support, Google urges the FCC to act quickly as proposed in the Tech/Users Framework.

Sincerely,



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